

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

CAPITOL RECORDS, LLC, <i>et al</i> ,	)	
	)	
<i>Plaintiffs,</i>	)	No. 07 Civ. 9931 (WHP)(FM)
	)	
MP3TUNES, LLC, and MICHAEL ROBERTSON,	)	
	)	
<i>Defendant.</i>	)	
	)	
MP3TUNES, LLC, and MICHAEL ROBERTSON,	)	
	)	
<i>Counter-Claimant,</i>	)	
	)	
CAPITOL RECORDS, LLC, <i>et al</i> ,	)	
	)	
<i>Counter-Defendants.</i>	)	
	)	

**SUPPLEMENTAL DECLARATION OF ALASDAIR MCMULLAN IN OPPOSITION TO  
MP3TUNES' MOTION FOR SUMMARY JUDGMENT**

I, Alasdair McMullan, declare, pursuant to 28 U.S.C. § 1746, as follows:

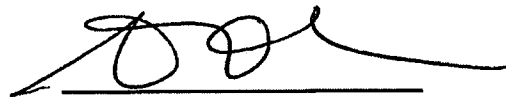
1. I am Executive Vice President, Legal Affairs of EMI Music North America and submit this declaration in opposition to MP3tunes' motion for summary judgment.
2. My responsibilities include, among others, supervising litigation and handling litigation-related matters for plaintiffs Capitol Records, LLC, Caroline Records, Inc., EMI Christian Music Group Inc., Priority Records LLC, and Virgin Records America, Inc. (collectively the "EMI Labels"). In fulfilling these duties I have regular access to the business

records of the EMI Labels. Further, I am knowledgeable about the EMI Labels' recording contracts with its artists.

3. During the course of my career, I reviewed many recording contracts between the EMI Labels and their recording artists, including many contracts governing sound recordings at issue in this litigation. It is standard practice for the EMI Labels to include a provision in their recording contracts stating that the recordings are being created as "works made for hire." As far as I am aware, in those cases in which a recording contract contains a "work for hire" clause, the contract also contains a provision that states that if the work is deemed not to be a "work for hire," then the contract constitutes an irrevocable transfer to the EMI Labels of complete copyright ownership in the sound recordings created pursuant to the agreement. Indeed, this is the standard formulation in the EMI Labels' form artist contract. As a result, whether or not a sound recording created pursuant to such an agreement is a "work for hire" does not affect the EMI Labels' current ownership of the sound recordings.

4. As an example of the provisions mentioned in the preceding paragraph, I attached an excerpt from EMI Labels' form recording contract as Exhibit A to this declaration. Paragraph 5.01 of the form agreement contains the typical "work for hire language" and the typical alternative assignment.

I declare under penalty of perjury that the foregoing is true and correct.

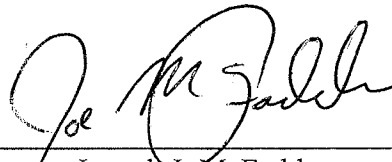


Alasdair McMullan

**Certificate of Service**

I, Joseph J. McFadden, do hereby certify that on this 24<sup>th</sup> day of November 2010, I caused true and correct copies of the within Supplemental Declaration of Andrew Bart, Supplemental Declaration of Ellis Horowitz, Supplemental Declaration of Alasdair McMullan, Supplemental Declaration of Michael Abitbol, Rule 56.1 Counterstatement of Undisputed Facts, Memorandum of Law in Opposition to Motion for Summary Judgment, and Plaintiffs' Evidentiary Objections to be served via the Court's Electronic Filing System, electronic transmission, and overnight delivery upon the following individual:

John Dellaportas, Esq.  
Duane Morris  
1540 Broadway  
Suite 1400  
New York, NY 10036-4086

A handwritten signature in black ink, appearing to read 'Joe McFadden', is written over a horizontal line.

Joseph J. McFadden

# Exhibit A

**THIS EXHIBIT HAS  
BEEN FILED  
UNDER SEAL**